

# **JOINT COMMITTEE ON ADMINISTRATIVE RULES**

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. DON HARMON

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REP. TIM SCHMITZ

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SEN. SUE REZIN  
SEN. DALE A. RIGHTER  
SEN. IRA SILVERSTEIN  
REP. GREG HARRIS  
REP. LOU LANG  
REP. DAVID R. LEITCH  
REP. DONALD L. MOFFITT  
REP. ANDRE' THAPEDI

## **MINUTES**

**July 9, 2013**

### **MEETING CALLED TO ORDER**

The Joint Committee on Administrative Rules met on July 9, 2013 at 11:00 a.m. in Room 413 of the Stratton Office Building in Springfield, Illinois.

Co-Chair Schmitz called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

### **ATTENDANCE ROLL CALL**

X Senator Pamela Althoff	X Representative Greg Harris
X Senator Don Harmon	X Representative Lou Lang
X Senator Tony Muñoz	X Representative David Leitch
X Senator Sue Rezin	X Representative Donald Moffitt
X Senator Dale Righter	X Representative Timothy Schmitz
X Senator Ira Silverstein	X Representative Andre' Thapedi

### **APPROVAL OF THE MINUTES OF THE JUNE 11, 2013 MEETING**

Senator Harmon moved, seconded by Representative Harris, to approve the minutes of the June 11, 2013 meeting. The motion passed unanimously.

### **REVIEW OF AGENCY RULEMAKINGS**

***Department of Commerce and Economic Opportunity – Illinois Film Production Services Tax Credit Program (14 Ill. Adm. Code 528; 36 Ill. Reg. 9823)***

Representative Lang moved, seconded by Senator Rezin, that JCAR recommend that, with respect to this rulemaking, DCEO be more timely in updating its rules when statutory changes are enacted. The motion passed unanimously.

***Illinois Emergency Management Agency – Accrediting Persons in the Practice of Medical Radiation Technology (32 Ill. Adm. Code 401; 37 Ill. Reg. 2783)***

Representative Leitch moved, seconded by Senator Silverstein, that JCAR and IEMA agree to extend consideration of this rulemaking for an additional 45 days. The motion passed unanimously.

***Department of Public Health – Child Health Examination Code (77 Ill. Adm. Code 665; 37 Ill. Reg. 60) and Immunization Code (77 Ill. Adm. Code 695; 37 Ill. Reg. 77)***

Senator Rezin moved, seconded by Representative Moffitt, that, with respect to these rulemakings, JCAR object to the Department's failure to adhere to the statutory directive that it implement these provisions of PA 95-159 by 9/13/07. The motion passed unanimously.

### **CONSIDERATION OF OTHER RULEMAKINGS**

Co-Chair Schmitz asked if any member desired consideration of any other rulemaking. Representative Harris requested consideration of an Attorney General (AG) rulemaking (Tab 1). Senator Righter expressed an interest in a CMS rulemaking (Tab 3). Representative Lang requested consideration of an ICC rulemaking (Tab 4). Senator Munoz requested consideration of a DOI rulemaking (Tab 17). Senator Althoff requested consideration of 2 DNR rulemakings (Tabs 27 & 28).

***Office of the Attorney General – Hospital Financial Assistance under the Fair Patient Practice Act (77 Ill. Adm. Code 4500; 37 Ill. Reg. 2621)***

Lynn Patton, Rules Coordinator, and David Buysse, Deputy Chief of the Public Interest Division, represented the AG's Office.

Representative Harris iterated that the hospital community and the affected public had expressed concern regarding the application process in this rulemaking. He asked the AG if anything new had developed in the last few days.

Ms Patton confirmed that, in the last 48 hours, the AG had agreed to add a good faith statement to the application and streamline the presumptive eligibility questions that, depending upon the applicant's response, can forestall the need for additional information.

Representative Harris asked if the AG would continue to work with affected groups to amend the forms for ease of use.

Ms Patton affirmed that the AG would do so.

***Department of Central Management Services – Business Enterprise Program: Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities (44 Ill. Adm. Code 10; 37 Ill. Reg. 3460)***

Kevin Connor, General Counsel, and Paul Cerpa, Deputy Director, represented CMS.

Senator Righter asked if CMS agreed to a 45 day Extension of this rulemaking to address outstanding issues regarding the creation of sheltered markets.

Mr. Cerpa confirmed that CMS agreed to the Extension.

Senator Righter stated that the Committee's hope was that CMS would place more detail in the rule, review court decisions that address what is permissible in the creation of sheltered markets, and seek uniformity in approach by the individual CPOs.

Mr. Cerpa promised that CMS would continue to work with JCAR staff.

***Department of Insurance – Health Maintenance Organization (50 Ill. Adm. Code 5421; 36 Ill. Reg. 12957)***

Michelle Oshman, Chief Deputy Director, and Jim Rundblom, Deputy General Counsel, represented DOI.

Representative Thapedi: Requested clarification of the 7/12/13 deadline by which insurance companies must submit their 2014 plans for DOI approval.

Ms Oshman: The deadline for submission to DOI was in April 2013. Insurers have already submitted plans. DOI is now in the process of working with the insurers to refine plan details. This is the 3<sup>rd</sup> round of interaction with insurers. DOI must recommend certification of the final plans to the federal government (as part of the Affordable Care Act (ACA) partner state process for the Insurance Exchange (or "market")) by the end of July and the federal government will make final decisions by the end of August. The 7/12/13 deadline is the insurers' last opportunity to alter their plans before DOI submits them to the federal government.

Representative Thapedi: Would DOI be able to meet its federal deadline if the rulemaking were extended?

Ms Oshman: In that case, DOI would submit the rulemaking as is.

Representative Thapedi: Then DOI believes that further discussions with insurers would be meaningless?

Ms Oshman: That was not what she meant to portray.

Representative Lang: He was told that if this issue were not resolved, insurers would withdraw and wait to submit their plans. Is this correct?

Ms Oshman: She had not heard that insurers would pull all of the plans. They would still submit HMO, PPO and indemnity plans that could comply with this rulemaking.

Representative Lang: He had heard the contrary, as recently as the previous day. What would be the impact if insurers withdrew their plans? Would this mean that the "shelves would not be stocked" with appropriate bronze, high deductible plans?

Ms Oshman: There are other bronze products, such as indemnity and more traditional PPO products, in addition to other level HMO products.

Representative Lang: Does Ms Oshman agree that, if any plans are withdrawn, it would mean fewer products available for consumers?

Ms Oshman: DOI believes that bronze HMO plans are not good for consumers. The 50% provision protects consumers who believe they are buying insurance when the bronze HMO plans are not their best alternative.

Representative Lang: Does federal and State law require insurers to provide bronze HMO plans?

Ms Oshman: Insurers can provide the plans, but they are not mandated by law. Only silver and gold HMO plans are mandated.

Representative Lang: Is DOI trying to get rid of bronze HMO plans?

Ms Oshman: DOI is attempting to protect consumers. Mr. Rundblom echoed this sentiment.

Representative Lang: How does DOI view the statutory conflict created by retaining the old (50%) rule as well as reflecting the new statute?

Mr. Rundblom: The new rule is consistent with statute.

Senator Righter: There is some confusion about the deadline. What is the deadline and to whom does it apply?

Ms Oshman: Under the ACA, DOI works as a partnership State with the federal government. The actual exchange will be set up by a different group. DOI's role is regulatory. DOI must determine if insurance plans are qualified to be included in the exchange. The federal Department of Health and Human Services (HHS) will certify the plans as Qualified Health Plans. DOI reviews filings to be sure the plan meets federal standards. All of these plans were filed with DOI in April 2013. By 7/31/13, DOI must upload its recommendations to HHS for review.

Senator Righter: Is it the insurer's option to ask DOI to forward its plans to HHS for certification?

Ms Oshman: The insurer agreed to do so upon submission of its initial plan to DOI. An insurer can withdraw its plan prior to submission to HHS, but it's never happened.

Senator Righter: Can an insurer decline to offer a plan after submission to HHS? Is DOI concerned that insurers will not write plans because of this rulemaking?

Ms Oshman: Plans must be HHS certified to be sold on the exchange. If the insurer does not choose to write a plan based on State and federal standards, it will not be certified and cannot be

sold on the exchange. This would only apply to the bronze HMO plans; other bronze plans are available on the market.

Senator Righter: Would DOI be concerned if insurers do not write bronze HMO plans because of this rulemaking?

Ms Oshman: This would not be a concern because other options exist that DOI believes are better for consumers.

Senator Righter moved, seconded by Representative Thapedi, that JCAR object to and prohibit filing of this rulemaking because, by retaining the 50% cap on copayments and deductibles, the aim of permitting some HMO customers to obtain high deductible plans, as expressed by PA 97-1148, is not achieved. JCAR finds that this constitutes a threat to the public interest. The motion passed on a roll call vote of 9-0-0 (Yes – Althoff, Rezin, Righter, Harris, Lang, Leitch, Moffitt, Schmitz, Thapedi; Not Present – Harmon, Munoz, Silverstein).

***Department of Natural Resources – Illinois Youth Recreation Corps Grant Program (17 Ill. Adm. Code 3075; 37 Ill. Reg. 8953)(Emergency) and Illinois Veteran Recreation Corps Grant Program (17 Ill. Adm. Code 3080; 37 Ill. Reg. 8963)(Emergency)***

Shelly Knuppel, Legal Counsel, represented DNR.

Senator Althoff requested confirmation that DNR would include the hourly wage in its proposed rulemaking.

Ms Knuppel agreed that DNR would do so.

Senator Althoff moved, seconded by Representative Moffitt, that JCAR recommends that, when the Department proposes a permanent version of the rulemaking, it include the wages for youth and supervisors. Section 5-10(c) of the Illinois Administrative Procedure Act specifically states that no agency policy is valid, and shall not be invoked, unless adopted as rule. The motion passed unanimously.

***Illinois Commerce Commission – Certification for the Installation, Maintenance or Repair of Electric Vehicle Charging Stations (83 Ill. Adm. Code 469; 36 Ill. Reg. 16421)***

Jonathan Feipel, Executive Director, and Brian Allen, attorney, represented ICC.

Representative Lang: What conversations has ICC had with IBEW since the last JCAR meeting?

Mr. Feipel: A number of the affected parties were contacted in the last 2 weeks, but IBEW was not.

Representative Lang: When did ICC last meet with IBEW? At the last JCAR meeting, instructions to meet with IBEW were very clear. Did ICC meet with IBEW?

Mr. Feipel: ICC has not met with IBEW. The last contact with IBEW was late May 2013. In meeting with all other affected parties, ICC was able to determine a position with which to approach IBEW. The timeline necessary for ICC to initiate the changes necessary to accommodate IBEW's position will exceed the time available under the JCAR 45 day Extension.

Representative Lang: ICC did not meet with IBEW, as it was asked to do at the last JCAR meeting. Therefore, JCAR and ICC are in exactly the same place as last month.

Mr. Feipel: That is correct. No agreement is in place to fix the rulemaking.

Representative Lang: What efforts have been made to find a solution to the rulemaking since the last JCAR meeting?

Mr. Feipel: ICC has been pushing the other affected parties to accept IBEW's position or to seek a compromise.

Representative Lang: When was the last meeting with the affected parties?

Mr. Feipel: ICC met with some parties last week.

Representative Lang: Why some and not all?

Mr. Feipel: All the parties have not been convened as a group because it seemed more productive to meet with the parties individually.

Representative Lang: Why did ICC not meet with IBEW when JCAR, on the record, asked it to do so?

Mr. Feipel: I will meet with IBEW as soon as possible.

Representative Lang: That should have been done in the past 30 days, as requested by the Committee.

A vote on this issue was taken under the Certificate of No Objection motion and passed on a voice vote, with 2 voting No (Lang, Harris) and 3 Not Present (Harmon, Munoz, Silverstein).

### **CERTIFICATION OF NO OBJECTION**

Representative Moffitt moved, seconded by Senator Rezin, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. Representatives Lang and Harris requested to be recorded "No" on Tab 4 (ICC – electric vehicle charging stations). Representative Lang requested to be recorded "Present" on Tabs 15 and 16 (HFS – ambulance provider appeal procedure).

## **EXPEDITED CORRECTIONS**

*Department of Children and Family Services – Placement and Visitation Services (89 Ill. Adm. Code 301; 37 Ill. Reg. 8972), Services Delivered by the Department of Children and Family Services (89 Ill. Adm. Code 302; 37 Ill. Reg. 8980) and Permanency Planning (89 Ill. Adm. Code 315; 37 Ill. Reg. 8984)*

Representative Harris moved, seconded by Representative Thapedi, that JCAR approve and certify the DCFS requests for Expedited Correction of these rulemakings. The effective date of the corrections is 3/5/12. The motion passed on a roll call vote of 9-0-0 (Yes – Althoff, Rezin, Righter, Harris, Lang, Leitch, Moffitt, Schmitz, Thapedi; Not Present – Harmon, Munoz, Silverstein).

## **AGENCY RESPONSES**

*Department of Public Health – Animal Population Control Code (77 Ill. Adm. Code 996; 37 Ill. Reg. 521)*

*Department of Veterans' Affairs – Payment of Maintenance Charges and Income Management at the Illinois Veterans Homes (95 Ill. Adm. Code 108; 37 Ill. Reg. 2471)*

*Department of Revenue – Retailers' Occupation Tax (86 Ill. Adm. Code 130; 36 Ill. Reg. 7971) and Service Occupation Tax (86 Ill. Adm. Code 140; 36 Ill. Reg. 7990)*

Based on the appropriateness of the agency's response, no further action was taken.

## **AUGUST MEETING DATE**

Co-Chair Schmitz announced that the next monthly meeting is scheduled for Tuesday, August 13, 2013, at 11:00 a.m., Room 600C, Michael A. Building, Chicago IL.

## **ADJOURNMENT**

Representative Lang moved, seconded by Representative Harris, that the meeting stand adjourned. The motion passed unanimously.

*Min:0713July*